

SENATE BILL 2372

By Cohen

AN ACT to amend Tennessee Code Annotated, Title 47, Chapter 18, Part 25, relative to unsolicited electronic advertising.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 47-18-2501, is amended by deleting such section in its entirety and substituting instead the following:

47-18-2501.

(a) No person or entity conducting business in this state shall send by facsimile (fax) or cause to be faxed, or send by e-mail or cause to be e-mailed, documents consisting of unsolicited advertising material for the lease, sale, rental, gift offer, or other disposition of any realty, goods, services, or extension of credit unless that person or entity shall establish a toll-free telephone number or return e-mail address that a recipient of the unsolicited faxed or e-mailed documents may call to notify the sender not to fax or e-mail the recipient any further unsolicited documents.

(b) All unsolicited e-mail documents subject to this section shall include a statement informing the recipient of a valid e-mail address that the recipient may e-mail notifying the sender not to e-mail the recipient any further unsolicited documents to the e-mail address specified by the recipient. All unsolicited faxed documents subject to this

section shall include a statement informing the recipient of the toll-free telephone number that the recipient may call notifying the sender not to fax the recipient any further unsolicited documents to the fax number or numbers specified by the recipient. In the case of faxed material, the statement shall be in at least nine (9) point type.

(c) Upon notification by a recipient of the recipient's request not to receive any further unsolicited faxed or e-mailed documents, no person or entity conducting business in this state shall fax or cause to be faxed, or e-mail or cause to be e-mailed, any unsolicited documents to that recipient.

(d) In the case of e-mail, that person or entity shall establish a toll-free telephone number or valid sender operated return e-mail address that the recipient of the unsolicited documents may call or e-mail to notify the sender not to e-mail any further unsolicited documents.

(e) In the case of e-mail that consists of unsolicited advertising material for the lease, sale, rental, gift offer or other disposition of any realty, goods, services or extension of credit, the subject line of each and every message shall include "ADV:" as the first four (4) characters and shall include the sender's name, street address and e-mail address. If these messages contain information that consists of unsolicited advertising material for the lease, sale, rental, gift offer, or other disposition of any realty, goods, services, or extension of credit, that may only be viewed, purchased, rented, leased, or held in possession by an individual eighteen (18) years of age or older, the subject line of each and every message shall include "ADV:ADLT" as the first eight (8) characters and shall include the sender's name, street address and e-mail address.

(f) In the case of unsolicited e-mail, this section shall also apply when the unsolicited e-mailed documents are delivered to a Tennessee resident via an electronic mail service provider's service or equipment located in this state. For these purposes, "electronic mail service provider" means any business or organization qualified to do

business in this state that provides individuals, corporations, or other entities the ability to send or receive electronic mail through equipment located in this state and that is an intermediary in sending or receiving electronic mail.

(g) It is unlawful for any person to sell, give or otherwise distribute or possess with the intent to sell, give or distribute software which:

(1) Is primarily designed or produced for the purpose of facilitating or enabling the falsification of electronic mail transmission information or other routing information;

(2) Has only limited commercially significant purpose or use other than to facilitate or enable the falsification of electronic mail transmission information or other routing information; or

(3) Is marketed by that person or another acting in concert with that person with that person's knowledge for use in facilitating or enabling the falsification of electronic mail transmission information or other routing information.

(h) As used in this section, "fax" or "cause to be faxed" or "e-mail" or "cause to be e-mailed" does not include or refer to the transmission of any documents by the telecommunications utility or Internet service provider to the extent that the telecommunications utility or Internet service provider merely carries that transmission over its network.

(i)

(1) Any person whose property or person is injured by reason of a violation of any provision of this section may sue therefor and recover for any damages sustained, and the costs of such suit including attorneys' fees. Without limiting the generality of the term, "damages" includes loss of profits.

(2) If the injury arises from the transmission of unsolicited electronic mail, the injured person, other than an electronic mail service provider, may also recover attorneys' fees and costs, and may elect, in lieu of actual damages, to recover the lesser of ten dollars (\$10.00) for each and every unsolicited electronic mail message transmitted in violation of this section, or five thousand dollars (\$5,000) per day. The injured person shall not have a cause of action against the electronic mail service provider that merely transmitted the unsolicited electronic mail over its computer network.

(3) If the injury arises from the transmission of unsolicited electronic mail, an injured electronic mail service provider may also recover attorneys' fees and costs, and may elect, in lieu of actual damages, to recover the greater of ten dollars (\$10.00) for each and every unsolicited bulk electronic mail message transmitted in violation of this section, or five thousand dollars (\$5,000) per day.

(4) If the injury arises from the transmission of unsolicited facsimiles, the injured person may also recover attorneys' fees and costs, and may elect, in lieu of actual damages, to recover the lesser of ten dollars (\$10.00) for each and every unsolicited facsimile transmitted in violation of this section, or five thousand dollars (\$5,000) per day.

(5) At the request of any party to an action brought pursuant to this section, the court may, in its discretion, conduct all legal proceedings in such a way as to protect the secrecy and security of the computer, computer network, computer data, computer program and computer software involved in order to prevent possible recurrence of the same or a similar act by another person and to protect any trade secrets of any party.

(6) The provisions of this subsection shall not be construed to limit any person's right to pursue any additional civil remedy otherwise allowed by law.

(j) The provisions of this section shall not be construed to restrict or apply to constitutionally protected communications to and from citizens and their elected representatives.

(k) This section, or any part of this section, shall become inoperative on and after the date that federal law is enacted that prohibits or otherwise regulates the transmission of unsolicited advertising by electronic mail (e-mail).

(l) The Tennessee regulatory authority is authorized to initiate proceedings relative to a violation of this section. Such proceedings shall include without limitation proceedings to issue a cease and desist order, to issue an order imposing a civil penalty up to a maximum of two thousand dollars (\$2,000) for each knowing violation, and to seek additional relief in any court of competent jurisdiction. Each violation shall be calculated in a liberal manner to deter violations and to protect consumers.

SECTION 2. This act shall take effect July 1, 2002, the public welfare requiring it.